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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,775	12/10/2003	Nigel Malcolm Lindner	F3342(C)	6982
201	7590	08/21/2006	EXAMINER	
UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			PEARSE, ADEPEJU OMOLOLA	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 08/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/732,775	Applicant(s) LINDNER ET AL.	
	Examiner Adepeju Pearse	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f). (See spec. page 6 line 22).

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims ~~1-6 and 9-12~~^{1 - 12} are rejected under 35 U.S.C. 102(b) as being anticipated by Fenn et al (US 2001/0048962). With regard to claims 1 and 4, Fenn et al disclose a frozen confectionery product such as water ices, sherbet, sorbet, ice milk, etc (0050) comprising discrete elements of the water ice containing ice structuring protein (0052) and having a level of solids more than 4 wt% (0051). Fenn et al also disclose that the average ice crystal size is preferably from 5 to 15µm (0039). It is inherent that the average volume of the water ice is less than 1ml as instantly claimed because of the ice crystal size is extremely small.

4. With regard to claims 2-3, it is inherent that the product comprises as many discrete water ice confections as instantly claimed because of the particle size of the ice crystals formed.

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5. With regard to claim 5, Fenn et al disclose optionally aerating the product, which inherently discloses that the product is unaerated as instantly claimed (0041).
6. With regard to claim 6, Fenn et al disclose that the level of solids in the frozen confectionery product is more than 4 wt%, which encompasses applicant's range (0051).
7. With regard to claims 7-8, Fenn et al disclose that the preferred AFP is derived from type III fish and most preferred HPLC-12 (0038).
8. With regard to claim 9, Fenn et al disclose that the preferred level is from 0.0001 to 0.5wt%.
9. With regard to claim 10, Fenn et al disclose that the frozen confection is packaged in containers (0044).
10. With regard to claims 11 and 12, Fenn et al disclose that the pack size is from 10g to 5000g for single or multiple portions (0044) and can be frozen in a shop or home freezer. It is inherent that the shop is a retail unit.
11. Claims 1-6 and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lillford et al (US Pat. No. 6,162,789). The rejection and reference are incorporated as cited in the prior office action.

Response to Arguments

12. Applicant's arguments filed 5/8/2006 have been fully considered but they are not persuasive. Applicant argues that Lillford et al does not disclose a frozen confection comprising a plurality of discrete water ice confections, which have an average volume of less than 1ml., Applicant draws examiner's attention to the specification, although the claims are interpreted in

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light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In addition applicant speculates that the single serve frozen confection product have volumes from 50-100ml, it is unclear how applicant derived this range. Applicant also asserts that water ice mixes have a density of the order of 1g/ml (i.e. similar to that of water). However, this assertion assumes that all water ice confections comprise similar ingredients and applicant has not provided any other evidence to the contrary.

13. Lillford et al disclose a frozen confectionery product such as water ice comprising anti-freeze proteins. It is inherent that the confection comprises discrete ice crystals in order to form the water ice confection.

Claim Rejections - 35 USC § 103

14. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

15. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lillford et al in view of Fletcher et al (US Pat. No. 6,174,550). The rejection and references are incorporated as cited in the previous office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Peju Pearse

X.



MILTON CANO
ASSISTANT PATENT EXAMINER
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